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**FJN Worldnet, Inc. and Christopher M. Brunette.**  
Case 18-CA-17515

July 29, 2005

**DECISION AND ORDER**

BY CHAIRMAN BATTISTA AND MEMBERS LIEBMAN AND  
SCHAUMBER

The Acting General Counsel seeks a default judgment in this case on the ground that the Respondent has failed to file an answer to the complaint. Upon a charge and an amended charge filed by Christopher M. Brunette on January 10 and March 18, 2005, respectively, the General Counsel issued the complaint on April 18, 2005, against FJN Worldnet, Inc., the Respondent, alleging that it has violated Section 8(a)(1) of the Act. The Respondent failed to file an answer.

On May 19, 2005, the General Counsel filed a Motion for Default Judgment with the Board. On May 26, 2005, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted.<sup>1</sup> The Respondent did not file a response. The allegations in the motion are therefore undisputed.

**Ruling on Motion for Default Judgment**

Section 102.20 of the Board's Rules and Regulations provides that the allegations in a complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. In addition, the complaint affirmatively stated that unless an answer was filed by May 2, 2005,<sup>2</sup> all the allegations in the complaint would be considered admitted.

Further, the undisputed allegations in the General Counsel's motion disclose that on May 3 counsel for the General Counsel telephoned the Respondent's senior vice president, Don E. Lucker, to confirm the Respondent's address. In that conversation, Lucker confirmed that the Region had sent the complaint to the correct address, but he nevertheless requested that the Region send

him a copy of the complaint by facsimile. The Region did so that same day. Also on May 3, the Region faxed Lucker a letter notifying the Respondent that unless an answer was filed by May 10, a motion for default judgment would be filed. On May 4, counsel for the General Counsel received a faxed letter from Attorney David Petersen, who stated that he was attempting, on behalf of the Respondent, to engage an attorney who could answer the complaint by May 10. Counsel for the General Counsel has received no further communications from Attorney Petersen. On May 10, the Respondent informed counsel for the General Counsel by telephone that it had engaged an attorney to represent it in the Board proceeding. Despite leaving two telephone messages with the designated attorney on that same day, counsel for the General Counsel has not received any further communications from the Respondent or from any attorney representing the Respondent since May 10. Thereafter, on May 12, 2005, the Region faxed another letter to Lucker requesting a telephone call from the Respondent or its attorney to explain why no answer had been filed by May 10, and advising the Respondent that unless an answer was received by May 13, a motion for default judgment would be filed. Neither the Respondent nor its attorney has responded to the Region's May 12 letter.

In the absence of good cause being shown for the failure to file a timely answer, we grant the General Counsel's Motion for Default Judgment.

On the entire record, the Board makes the following

**FINDINGS OF FACT**

**I. JURISDICTION**

At all material times, the Respondent, a North Dakota corporation with a principal place of business located in Grafton, North Dakota, and a branch office located in Bozeman, Montana, has been engaged in the solicitation and procurement of government construction contracts and the construction of buildings on Federal sites.

During the calendar year ending December 31, 2004, the Respondent, in conducting its business operations described above, purchased and received goods and supplies valued in excess of \$50,000 directly from points located outside the State of North Dakota.

We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

**II. ALLEGED UNFAIR LABOR PRACTICES**

At all material times, the following individuals held the positions set forth opposite their respective names and have been supervisors of the Respondent within the meaning of Section 2(11) of the Act and agents of the Respondent within the meaning of Section 2(13) of the Act:

<sup>1</sup> The complaint was served on the Respondent by certified mail on April 18, 2005. The postal service returned the envelope containing the complaint to the Region on May 12, 2005, marked "unclaimed." The Notice to Show Cause was sent to the Respondent by certified mail on May 26, 2005. The Respondent, however, also did not claim this item. It is well settled that a respondent's failure or refusal to accept certified mail or to provide for appropriate service cannot serve to defeat the purposes of the Act. See, e.g., *I.C.E. Electric, Inc.*, 339 NLRB 247 fn. 2 (2003), and cases cited there. In any event, the Notice to Show Cause was also served by certified mail on the Respondent's counsel, and the Board subsequently received the postal return receipt card, indicating that the Respondent's counsel received the Notice to Show Cause.

<sup>2</sup> All dates are in 2005, unless stated otherwise.

Don E. Lucker	Senior Vice President
Robbin W. Koning	Senior Construction Manager
Perry Gardner	Project Superintendent

In about November 2004, the Respondent, by Perry Gardner, at the Minot Air Force Base jobsite, threatened an employee with discharge for concertedly making complaints about employees' paychecks.

In about November and December 2004, and on January 3, 2005, the Respondent's employee, Christopher M. Brunette, concertedly spoke to employees about wages, hours, and working conditions, including about the Respondent's repeated payroll problems.

On about January 6, 2005, the Respondent discharged Christopher M. Brunette. The Respondent discharged Brunette because he engaged in the conduct set forth above, and to discourage employees from engaging in those and similar activities.

#### CONCLUSION OF LAW

By discharging Christopher M. Brunette and threatening an employee with discharge for concertedly complaining about employees' paychecks, the Respondent has interfered with, restrained, and coerced employees in the exercise of the rights guaranteed by Section 7 of the Act, in violation of Section 8(a)(1) of the Act. The Respondent's unfair labor practices affect commerce within the meaning of Section 2(6) and (7) of the Act.

#### REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. Specifically, having found that the Respondent has violated Section 8(a)(1) of the Act by discharging Christopher M. Brunette, we shall order the Respondent to offer Brunette full reinstatement to his former job or, if that job no longer exists, to a substantially equivalent position, without prejudice to his seniority or any other rights and privileges previously enjoyed. Further, we shall order the Respondent to make Brunette whole for any loss of earnings and other benefits suffered as a result of the discharge. Backpay shall be computed in accordance with *F. W. Woolworth Co.*, 90 NLRB 289 (1950), with interest as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

The Respondent also shall be required to remove from its files all references to Brunette's discharge, and to notify him in writing that this has been done and that the discharge will not be used against him in any way.

#### ORDER

The National Labor Relations Board orders that the Respondent, FJN Worldnet, Inc., Grafton, North Dakota, its officers, agents, successors, and assigns, shall

1. Cease and desist from

- (a) Threatening employees with discharge for concertedly making complaints about employees' paychecks.

- (b) Discharging employees because they concertedly speak to fellow employees about wages, hours, and working conditions.

- (c) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

- (a) Within 14 days from the date of this Order, offer Christopher M. Brunette full reinstatement to his former job or, if that job no longer exists, to a substantially equivalent position, without prejudice to his seniority or any other rights and privileges previously enjoyed.

- (b) Make Christopher M. Brunette whole for any loss of earnings and other benefits suffered as a result of his unlawful discharge, with interest, in the manner set forth in the remedy section of this decision.

- (c) Within 14 days from the date of this Order, remove from its files all references to the unlawful discharge of Christopher M. Brunette, and within 3 days thereafter, notify him in writing that this has been done and that the unlawful discharge will not be used against him in any way.

- (d) Preserve and, within 14 days of a request, or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place designated by the Board or its agents, all payroll records, social security payment records, timecards, personnel records and reports, and all other records, including an electronic copy of such records if stored in electronic form, necessary to analyze the amount of backpay due under the terms of this Order.

- (e) Within 14 days after service by the Region, post at its facility in Grafton, North Dakota, copies of the attached notice marked "Appendix."<sup>3</sup> Copies of the notice, on forms provided by the Regional Director for Region 18, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees em-

<sup>3</sup> If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

ployed by the Respondent at any time since November 2004.

(f) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. July 29, 2005

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Robert J. Battista,	Chairman
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Wilma B. Liebman,	Member
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Peter C. Schaumber,	Member
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(SEAL) NATIONAL LABOR RELATIONS BOARD

#### APPENDIX

##### NOTICE TO EMPLOYEES

##### POSTED BY ORDER OF THE

##### NATIONAL LABOR RELATIONS BOARD

##### An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

#### FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT threaten employees with discharge for concerted making complaints about employees' paychecks.

WE WILL NOT discharge employees because they concerted speak to fellow employees about wages, hours, and working conditions.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, within 14 days from the date of the Board's Order, offer Christopher M. Brunette full reinstatement to his former job or, if that job no longer exists, to a substantially equivalent position, without prejudice to his seniority or any other rights and privileges previously enjoyed.

WE WILL make Christopher M. Brunette whole for any loss of earnings and other benefits resulting from his unlawful discharge, with interest.

WE WILL, within 14 days from the date of the Board's Order, remove from our files all references to the unlawful discharge of Christopher M. Brunette, and WE WILL, within 3 days thereafter, notify him in writing that this has been done and that the unlawful discharge will not be used against him in any way.

FJN WORLDNET, INC.